

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

L.T. *et al.*,

Plaintiffs,

-against-

1:21-CV-1034 (LEK/DJS)

HOWARD A. ZUCKER, in his official
capacity and in his individual capacity,

Defendant.

ORDER TO SHOW CAUSE
with request for
TEMPORARY RESTRAINING ORDER

The Court has considered Plaintiffs' verified complaint sworn to on September 20, 2021, the affirmation of attorney Thomas Marcelle dated September 27, 2021, the declarations of Plaintiffs' experts Jayanta Bhattacharya, Nicholas Kardaras, Daniel Stock, Lauren Capriola and Stephen Petty, Plaintiffs' memorandum of law, and all other proceedings and filings had herein.

The Court has reviewed Plaintiffs' request for immediate disclosures pertaining to the expert proof Defendant relied upon in establishing the mask mandate at issue. See Pls.' Mem. at 20–22. The Court declines to rule on this request at the present time and will allow Defendant an opportunity to respond to the request for disclosures in its response papers due October 1, 2021 as ordered below, and Plaintiffs an opportunity to reply to this response in its reply papers due October 4, 2021. The Court will rule on Plaintiffs' request for disclosures after Plaintiffs have served their reply papers.

However, on the basis of the pleadings and papers described above, Plaintiffs have sufficiently shown cause that the Court should dispense with the notice of motion requirement of

Local Rule 7.1(b). Therefore, the Court is of the opinion that an order to show cause should be granted:

ORDERED, that Defendant show cause before the Honorable Judge Lawrence Kahn in Courtroom No. 1 on the fourth floor of the James T. Foley U.S. Courthouse, 445 Broadway, Albany, NY 12207 on October 7, 2021, at 10 A.M., why a temporary restraining order pursuant to Federal Rule of Civil Procedure 65(b) should not be issued enjoining Defendant from enforcing that part of 10 NYCRR § 2.60 requiring primary and secondary students to wear masks until the Court hears and determines Plaintiffs' motion for a preliminary injunction and why such other and further relief should not be granted to Plaintiffs that the Court may deem just and proper; and it is further

ORDERED, that Plaintiffs shall serve a copy of this Order together with all papers in support of Plaintiffs' Order to Show Cause, upon Defendant Howard Zucker by delivering the same to his office, the New York State Department of Health, located at Corning Tower, Empire State Plaza, Albany, New York no later than 5 P.M. on September 29, 2021 and upon the New York State Attorney General Letitia James at the location she has designated for personal service of papers at the Empire State Plaza, Justice Building, 2nd Floor, Albany, NY 12224 no later than 5 P.M. on September 29, 2021.

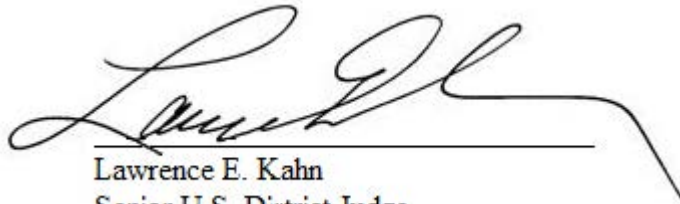
ORDERED, that Defendant shall file and serve responsive papers on Plaintiffs' attorney on or before October 1, 2021 with respect to Plaintiffs' request for a temporary restraining order; Plaintiffs may file and serve a reply memorandum not to exceed ten pages on Defendants' attorney on or before October 4, 2021; and it is further

ORDERED, that Defendant show cause before the Honorable Judge Lawrence Kahn in Courtroom No. 1 on the fourth floor of the James T. Foley U.S. Courthouse, 445 Broadway,

Albany, NY 12207, why a preliminary injunction pursuant to Federal Rule of Civil Procedure 65(a) should not be issued enjoining Defendant from enforcing that part of 10 NYCRR § 2.60 requiring primary and secondary students to wear masks and why such other and further relief should not be granted to Plaintiffs that to this Court may seem just and proper; the Court will set a specific date and time for the hearing on Plaintiffs' preliminary injunction when it rules on Plaintiffs' request for disclosures;

IT IS SO ORDERED.

DATED: September 28, 2021
Albany, New York



Lawrence E. Kahn
Senior U.S. District Judge